

Message Text

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TO AMEMBASSY CARACAS

INFO AMEMBASSY LONDON

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E.O. 11652: N/A

TAGS: ENRG, EINV, VE

SUBJECT:OVERRIDING ROYALTY RIGHTS HOLDERS IN VENEZUELA

1. DEPT HAS REVIEWED LETTER BY RICHARD CHADWICK COLLINS
DATED JULY 30 AND OTHER MATERIALS ON VENEZUELAN ROYALTY
HOLDERS SUBMITTED BY AMERICAN ULTRAMAR. WE CONCLUDE THAT
YOU SHOULD ADVISE CHADWICK COLLINS AS FOLLOWS:

"THE DEPT HAS CONSIDERED YOUR LETTER OF JULY 30TH ON
BEHALF OF CERTAIN UNITED STATES CITIZENS WHO WERE OWNERS
OF ROYALTIES ON CERTAIN VENEZUELAN OIL CONCESSIONS THAT
WERE TERMINATED BY VENEZUELAN LAW EFFECTIVE JANUARY 1,
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1976, TOGETHER WITH OTHER MATERIALS FURNISHED US.

THE DEPT IS OF THE VIEW THAT THE INFORMATION AVAILABLE TO US DOES NOT FURNISH AN ADEQUATE BASIS FOR REPRESENTATIONS TO THE GOV AT THIS TIME. THERE ARE AT THE PRESENT MOMENT TOO MANY UNRESOLVED LEGAL ISSUES CONCERNING THE SITUATION TO MAKE SUCH REPRESENTATIONS EFFECTIVE.

"THE PAPERS LEAVE IN DOUBT THE CHARACTER OF THE RIGHTS POSSESSED BY THE ROYALTY HOLDERS PRIOR TO THE 1975 LAW. IF THEY ARE PROPERLY CHARACTERIZED AS CONTRACT RIGHTS AGAINST THE HOLDERS OF THE CONCESSIONS, THE ROYALTY

HOLDERS HAVE CLAIMS ONLY AGAINST THE CONCESSIONAIRES. IF THEY ARE PROPERLY CHARACTERIZED AS PROPERTY RIGHTS IN THE HYDROCARBONS THEMSELVES THEN THE TAKING OF ALL OF THE PROPERTIES COVERED BY THE CONCESSIONS CONSTITUTE A TAKING OF PROPERTY FROM THE ROYALTY HOLDERS AS WELL. THE JULY 30 MEMORANDUM AT TIMES REFERS TO THE RIGHTS AS A FORM OF PROPERTY AND AT OTHER TIMES AS 'A RIGHT TO RECEIVE PAYMENT UNDER CONTRACT.' WE HAVE EXAMINED WHAT APPEAR TO BE COPIES OF INSTRUMENTS TRANSFERRING THE ROYALTY RIGHTS TO SOME OF THE CLAIMANTS. THEY DO SPEAK OF RIGHTS TO SPECIFIED PERCENTAGES OF THE HYDROCARBONS PRODUCED FROM THE PROPERTIES IN QUESTION. HOWEVER, THE BASIC DOCUMENTS CREATING THE RIGHTS, THAT IS, THE CONCESSIONS OF 1933 TO 1935, ARE NOT BEFORE US AND WOULD HAVE TO BE INTERPRETED IN THE LIGHT OF VENEZUELAN LAW. THE GENERAL SPANISH RULE ON THESE MATTERS HAS BEEN THAT HOLDERS OF CONCESSIONS AND DERIVATIVE RIGHTS OBTAIN ONLY CONTRACTUAL CLAIMS AND NOT RIGHTS ON THE HYDROCARBONS IN PLACE. FURTHERMORE, THE GOV IN DEALING WITH CONCESSIONAIRES HAS DENIED THEY HELD RIGHTS TO OIL IN THE GROUND. A REPRESENTATION BY THE USG TO THE GOV WOULD HAVE TO BE BASED ON A CONVINCING SHOWING THAT THE ROYALTY HOLDERS POSSESSED PROPERTY RIGHTS.

"IF THE ROYALTY HOLDERS HAVE ONLY CONTRACTUAL RIGHTS THEY MIGHT WISH TO EXPLORE THE POSSIBILITIES OF RECOURSE AGAINST THE CONCESSIONAIRES. ARTICLE 18 OF THE LAW ON HYDROCARBONS MAY BE READ AS INDICATING THAT THE BURDEN LIMITED OFFICIAL USE

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OF REIMBURSEMENT IS ON THE FORMER HOLDERS OF NATIONALIZED CONCESSIONS AND THAT THE ROYALTY HOLDERS SHOULD LOOK TO THE INDEMNIZATION PAID THE COMPANIES.

"IN MAKING YOUR DECISION AS TO THE APPROPRIATE ACTION TO TAKE AT THIS TIME YOU SHOULD BEAR IN MIND THE REQUIREMENT OF EXHAUSTION OF REMEDIES. THAT DOCTRINE REQUIRES A PARTY TO EXHAUST REMEDIES IN LOCAL COURTS BEFORE

DIPLOMATIC PROTECTION CAN BE EXERCISED. EXHAUSTION IS EXCUSED ONLY IN CASES WHERE IT IS PLAIN THAT THERE IS NO LOCAL REMEDY. FAILURE TO PURSUE LEGAL REDRESS WILL NOT ONLY LEAVE THE SITUATION UNCLARIFIED BUT MAY ALSO SERVE LATER AS A BARRIER TO EFFECTIVE DIPLOMATIC REPRESENTATION OF YOUR CLIENTS' INTERESTS.

"THE DEPT IS IN SYMPATHY WITH THE POSITION OF THE ROYALTY HOLDERS. RECEIPT OF MORE COMPLETE INFORMATION AS TO THE ISSUES RAISED ABOVE MAY ENABLE DEPT TO MAKE A CONVINCING REPRESENTATION TO THE GOV SHOULD IT DECIDE THAT A REPRESENTATION WOULD BE APPROPRIATE AND DESIRABLE. DATA SHOULD ALSO INCLUDE A MORE COMPLETE RECONCILIATION OF THE VARIOUS LISTS OF ROYALTY HOLDERS THAT HAVE BEEN FURNISHED DEPT." KISSINGER

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